



6712-01

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[FCC 16-70]

Service by Email for Notice of Petitions for Review and Appeals

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Communications Commission (Commission) amends its rules to allow and in certain circumstances to require parties to give the Commission notice of lawsuits by email. First, it requires persons petitioning for judicial review who wish to participate in a “judicial lottery” to notify the Commission of the petition by email. This method will allow timely service, and will eliminate security concerns that arise through in-person service. Further, the new rule encourages, but does not require, notice by email for persons who petition for review but do not seek to participate in a lottery. It likewise encourages, but does not require, notice by email for persons who judicially appeal Commission decisions.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Richard Welch, 202-418-7225.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission’s Order, FCC 16-70, adopted on June 1, 2016, and released on June 3, 2016. The full text of this document will be available for public inspection and copying via ECFS, and during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY-A257, Washington, DC 20554.

Synopsis

1. By this order, we revise Section 1.13 of our rules to allow and in certain circumstances require parties to give the Commission notice of lawsuits by email. First, we revise 47 CFR 1.13(a)(1) of our rules to change the procedure by which a party petitioning for review of a Commission decision under 47 U.S.C. 402(a) must notify the Commission in order to take advantage of the random selection procedures described in 28 U.S.C. 2112. That statute provides for a lottery to select a court when parties have petitioned for review of the same FCC decision in more than one court, provided that petitioners serve a copy of the petitions for review on the agency within ten days of issuance of the order under review. 28 U.S.C. 2112(a)(1), (3). Because the procedure is time sensitive due to this ten-day statutory deadline, the Commission has established rules to ensure that its Office of General Counsel receives timely notice of the petition for review. 47 CFR 1.13(a)(1); see Addition of New Section 1.13 to the Commission's Rules of Practice & Procedure, 4 FCC Rcd 2092 (1989).

2. Until now, those rules have directed petitioners to make that service in person at the Office of General Counsel in the Commission's Washington, DC headquarters. However, that method of service is not easily reconciled with the security protocols that currently apply to other filings with the Commission. We therefore now revise our rules for these situations to require service by email according to specific procedures, as set out in the new rule. These procedures will allow for timely service on the Commission without raising the issues with respect to Commission security requirements that are currently presented by service in person. We also expect that this method of service will be more convenient for most petitioners and their counsel, especially those located outside of the Washington, D.C. metropolitan area. For parties who are not represented by counsel and who are unable to use email to effect service, we have retained a method to serve notice in person on the Office of General Counsel. Such parties must

telephone prior to service to make arrangements, and are advised to do so at least a day before service, keeping in mind the ten-day statutory deadline by which service must be complete.

3. For the convenience of parties and the Commission, we also revise our rules to authorize—but not require—email notice of lawsuits against the Commission under 47 U.S.C. 402(b). Specifically, we revise section 1.13(b) of our rules, which applies to parties appealing certain licensing-related FCC actions under 47 U.S.C. 402(b), to authorize and encourage service of notices of appeal on the General Counsel by email. See 47 U.S.C. 402(c) (requiring notice on Commission); cf. Fed. R. App. P. 25(c)(1)(D) (permitting electronic service with consent of party). Because notices of appeal under section 402(b) are not as time-sensitive as lottery proceedings under 28 U.S.C. 2112, however, we do not require service by email, and parties may use non-electronic means of service, such as U.S. mail, as permitted by the Federal Rules of Appellate Procedure and any applicable local rules.

4. Finally, we amend the note to section 1.13 to also encourage service by email of petitions for review under 47 U.S.C. 402(a) by petitioners that are not seeking to participate in a judicial lottery pursuant to 28 U.S.C. 2112. Although there is no requirement under the Federal Rules of Appellate Procedure or section 402 for parties to serve the Commission with such petitions for review, service by email will assist the Commission in timely responding to litigation. Where service by email is impracticable for such petitioners, the Commission requests service by non-electronic means.

5. Because this is a revision to a procedural rule, notice and comment is not required in advance of its adoption. See 5 U.S.C. 553(b). For the same reason, we are also not required to perform a regulatory flexibility analysis, see 5 U.S.C. 603(a), or to submit the rule for review under the Congressional Review Act, see 5 U.S.C. 804(3)(C). Authority for this rulemaking is contained in 47 U.S.C. 154(i) and 154(j) and 28 U.S.C. 2112(a)(2).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Lawyers, Litigation, and Telecommunications.

FEDERAL COMMUNICATIONS COMMISSION.

Marlene H. Dortch,
Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452, and 1455.

2. Section 1.13 is revised to read as follows:

§ 1.13 Filing of petitions for review and notices of appeals of Commission orders.

(a) Petitions for review involving a judicial lottery pursuant to 28 U.S.C. 2112(a). (1) This paragraph pertains to each party filing a petition for review in any United States court of appeals of a Commission Order pursuant to 47 U.S.C. 402(a) and 28 U.S.C. 2342(1), that wishes to avail itself of procedures established for selection of a court in the case of multiple petitions for review of the same Commission action, pursuant to 28 U.S.C. 2112(a). Each such party shall, within ten days after the issuance of that order, serve on the Office of General Counsel, by email to the address LitigationNotice@fcc.gov, a copy of its petition for review as filed and date-stamped by the court of appeals within which it was filed. Such copies of petitions for review must be received by the Office of General Counsel by 5:30 p.m. Eastern Time on the tenth day of the filing period. A return email from the Office of General Counsel acknowledging receipt of the petition for review will constitute proof of filing. Upon receipt of any copies of petitions for review according to these procedures, the Commission shall follow the procedures established in section 28 U.S.C. 2112(a) to determine the court in which to file the record in that case.

(2) If a party wishes to avail itself of procedures established for selection of a court in the case of multiple petitions for review of the same Commission action, pursuant to 28 U.S.C. 2112(a), but is unable to use email to effect service as described in paragraph (a)(1) of this section, it shall instead, within ten days after the issuance of the order on appeal, serve a copy of its petition for review in person on the General Counsel in the Office of General Counsel, 445 12th Street, SW., Washington, DC 20554. Only parties not represented by counsel may use this method. Such parties must telephone the Litigation Division of the Office of General Counsel beforehand to make arrangements at 202-418-1740. Parties are advised to call at least one day before service must be effected.

(3) Computation of time of the ten-day period for filing copies of petitions for review of a Commission order shall be governed by Rule 26 of the Federal Rules of Appellate Procedure. The date of issuance of a Commission order for purposes of filing copies of petitions for review shall be the date of public notice as defined in § 1.4(b) of the Commission's Rules, 47 CFR 1.4(b).

(b) Notices of appeal pursuant to 47 U.S.C. 402(b). Copies of notices of appeals filed pursuant to 47 U.S.C. 402(b) shall be served upon the General Counsel. The FCC consents to—and encourages—service of such notices by email to the address LitigationNotice@fcc.gov.

Note: For administrative efficiency, the Commission requests that any petitioner seeking judicial review of Commission actions pursuant to 47 U.S.C. 402(a) serve a copy of its petition on the General Counsel regardless of whether it wishes to avail itself of the procedures for multiple appeals set forth in 47 U.S.C. 2112(a). Parties are encouraged to serve such notice by email to the address LitigationNotice@fcc.gov.

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